

FILED

JUN 4 2010

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

In re	)	Case No. 09-45778-E-13
	)	Docket Control No. DNL-4
RAJ SINGH,)	
)	
Debtor(s).)	
_____)	
RAJ SINGH,	)	Adv. Pro. No. 10-02154
)	
Plaintiff(s),)	
v.)	
	)	DATE: June 1, 2010
STEPHEN LIPWORTH,	)	TIME: 2:00 p.m.
	)	DEPT: E
Defendant(s).)	
_____)	

- NOT FOR PUBLICATION -

MEMORANDUM OPINION AND DECISION
Motion to Dismiss Adversary Proceeding

The court announced its ruling at the May 11, 2010 hearing on the Motion to Dismiss. At the request of Raj Singh ("Singh") the hearing was continued three weeks to June 1, 2010, for the express purpose of allowing Singh to obtain counsel and allow counsel to present arguments Singh as the Plaintiff/Debtor as to the plausible claims which the Plaintiff/Debtor intends to prosecute if allowed to amend the complaint. The court expressly stated that if, after allowing for the three weeks as required by Singh, such counsel for Singh could not articulate a plausible claim which Singh intends to assert in an amended complaint, the court would make its tentative

1 decision the final decision.

2 Upon reviewing the Docket for a substitution of counsel, the
3 court determined that one has not been filed as of May 28, 2010.
4 The court did identify a new pleading by Singh, a document entitled
5 "Notice of Dismissal," by which Singh purports to dismiss the
6 adversary proceeding "without prejudice."

7 Pursuant to Rule 41(a), Federal Rules of Civil Procedure, and
8 Rule 7041, Federal Rules of Bankruptcy Procedure, a plaintiff has
9 the right to voluntarily dismiss an adversary proceeding at any
10 time prior to the defendant filing an answer or motion for summary
11 judgment. In the present case, no answer or motion for summary
12 judgment was filed. The filing of another pleading, such as the
13 present Motion to Dismiss, is not adequate to alter the rights of
14 a plaintiff under Rule 41(a). Concha v. London, 62 F.3d 1493, 1506
15 (9th Cir. 1995).

16 The plaintiff having filed a voluntary dismissal of this
17 action prior to the filing of an answer or motion for summary
18 judgment, the Motion to Dismiss is dropped from the calendar
19 without the entry of an order.

20 The court having announced its decision to dismiss the
21 adversary proceeding with prejudice, but the order on that not
22 having been entered at the time of the voluntary dismissal by
23 Singh, and in light of the repetitive pleadings filed in several
24 bankruptcy cases and adversary proceedings by Singh, the court sets

25 ///

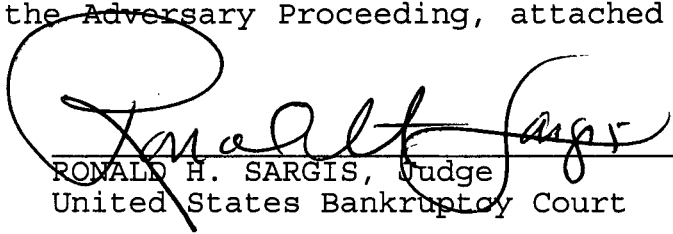
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1 forth its ruling, which was not entered, concerning the announced
2 court ordered dismissal of the Adversary Proceeding, attached as
3 Addendum 1.

4 Dated: June 4, 2010


RONALD H. SARGIS, Judge
United States Bankruptcy Court

1 ADDENDUM 1

2
3 ANNOUNCED TENTATIVE DECISION
4 TO DISMISS COMPLAINT WITH PREJUDICE

5 The court's tentative decision is to grant the Motion to
6 Dismiss with prejudice.

7 Stephen Lipworth ("Lipworth") has filed a Motion to Dismiss
8 the Adversary Proceeding, which is the second such proceeding filed
9 in this bankruptcy case. In the First Adversary Proceeding,
10 No. 09-02810, the court granted Lipworth's motion to dismiss, and
11 granted Singh fourteen (14) days to amend that complaint. In
12 granting the Motion to Dismiss the court issued a Memorandum
13 Opinion and Decision addressing substantive and procedural
14 deficiencies in the First Adversary Proceeding. Singh did not
15 amend that complaint, but elected to file a new Adversary
16 proceeding, the instant Adversary Proceeding, No. 10-2154 ("Second
17 Adversary Proceeding). Since the Second Adversary Proceeding is in
18 substance the amended complaint for which Singh was given leave to
19 file in the First Adversary Proceeding, court adopts and
20 incorporates that Memorandum Opinion and Decision into this
21 decision. The Memorandum Opinion and Decision is attached to this
22 decision as Addendum 1.

23 **Oral Argument at May 11, 2010 Hearing.**

24 At the May 11, 2010 oral argument the court received extensive
25 oral argument from Singh concerning this adversary proceeding, how
26 it relates to the earlier adversary proceeding filed by Singh
27 against Lipworth and the pending adversary proceeding that Singh
28 has filed against his ex-wife, and the various motions he has filed

1 against Lipworth in his bankruptcy cases. The court specifically
2 requested that Singh explain in plain English, what rights he
3 thought he had against Lipworth that Singh was attempting to assert
4 in this case. Singh was unable to articulate any specific claims,
5 and ultimately stated that he wanted to now obtain counsel and
6 needed three weeks to do so.

7 The one point which Singh repeated during the oral argument,
8 as he has done in the prior adversary proceeding against Lipworth,
9 in the various motions filed against Lipworth, and in the adversary
10 proceeding against his ex-wife, is that he disagrees with the
11 determination made in state court that he used the names Suman
12 Mehta and Kaus Singh, his sister-in-law and his brother,
13 respectively, as he stated to the court at oral argument. This
14 determination by the state court, and as ordered on remand by the
15 Third District Court of Appeal, resulted in Lipworth having a
16 Sheriff's sale conducted for the Duplex (infra) in partial
17 satisfaction of a judgment which Lipworth had obtained against
18 Singh. In the prior adversary proceeding Singh disavowed any
19 ownership of the Duplex, and sought to litigate the rights of Suman
20 Mehta, Kaus Singh, and Lipworth.

21 Singh's basic contention is that notwithstanding the
22 determinations made in the state court, what's true is true and no
23 matter what the state court said, he is not Suman Mehta nor Kaus
24 Singh. He is seeking to have a federal court make a ruling saying
25 that he is not Suman Mehta or Kaus Singh, though Singh has not
26 stated the purpose for such a determination.

27 The example which Singh has continuously used to advance his
28 "the truth is the truth even if someone says it is different" is

1 that two plus two equals four, even if the state court says that it
2 is five. This example by Singh misses the significance of legal
3 proceedings and the effect of a decision on the parties.

4 A better example to be used is that in his situation there
5 were various facts and evidence submitted to the trial court. From
6 those facts and evidence the state court concluded that all of it
7 added up to five (the finding that Singh used the names Suman Mehta
8 and Kaus Singh to have ownership of the Duplex). Singh argues that
9 the state court added up the facts and evidence incorrectly and
10 have reached the erroneous conclusion that two plus two equals
11 five.

12 What Singh misunderstands in his example that when a court
13 proceeding is concluded the court adds up the facts and evidence
14 and comes to a conclusion. It is not a situation that two plus two
15 equals five, but that the court found that the facts and evidence
16 (which may have been $1 + 2 + 2$) equaled finding that Singh used the
17 names Suman Mehta and Kaus Singh to own the Duplex. The fundamental
18 disagreement Singh asserts is that he does not agree with the state
19 court as to what facts and evidence (numbers) the court was adding
20 up.

21 In addressing the issue of whether the court should grant the
22 dismissal with prejudice, give leave to amend, or dismiss without
23 prejudice, Singh first asserted that this case has a different
24 number from the prior adversary proceeding, as well as all of the
25 motions he has filed, discussed infra., and is different from them.
26 The common thread through the adversary proceedings is that
27 Lipworth enforce his judgment against Singh in state court based on
28 the state court concluding that Singh used the names Suman Mehta or

1 Kaus Singh, and that Singh disputes that he used the names Suman
2 Mehta and Kaus Singh with respect to owning the Duplex.

3
4 The court counts at least ten (10) adversary proceedings and
5 Contested Matters (motions in bankruptcy court) in which Singh
6 asserts that he is not Suman Mehta or Kaus Singh, nine (9) of which
7 directly involved Lipworth. This does not include the various
8 state court actions in which Singh asserted this against Lipworth,
9 including the appeal before the Third District Court of Appeal in
10 which that court determined that Singh used the names Suman Mehta
11 and Kaus Singh with respect to the Duplex and ordered the state
12 court to proceed with the Sheriff's sale.

13 At the hearing on May 11, 2010, Singh argued that the court
14 just dismiss the adversary proceeding without prejudice because
15 Singh did not intend to proceed with litigation against Lipworth
16 until Singh obtained an attorney. Given Singh's proven track
17 record of litigation against Lipworth, such statements ring hollow
18 and are not given any credibility by the court. Further, the court
19 has accommodated Singh's request that he be given the requested
20 three weeks to substitute in counsel.

21 The court finds three weeks to be reasonable in that Singh has
22 been involved in this litigation with Lipworth for years. He has
23 commenced two adversary proceedings in this court against Lipworth
24 and one against his ex-wife on the Singh-Suman Mehta-Kaus Singh
25 issue, he has filed three bankruptcy cases, prosecuted state court
26 actions, and an appeal before the Third District Court of Appeal.
27 He is well versed in litigation and the court process.
28 Additionally, at the May 11, 2010 hearing Singh advised the court

1 that he had been consulting with attorneys on these various claims,
2 and that in light of that he should be allowed to amend this
3 complaint as a pro se. Singh has been provided many opportunities
4 over an extended period of time to seek the advice of counsel
5 (which he reports to have done) and substitute that counsel into
6 the various lawsuits and bankruptcy cases he has filed.

7 **MOTION TO DISMISS SECOND ADVERSARY PROCEEDING.**

8 The present Motion seeks to dismiss the Second Adversary
9 Proceeding based on the contention that "The complaint fails to
10 state a claim because neither bankruptcy nor state law recognizes
11 either of the theories upon which Sing has based his claims in the
12 Complaint filed in the Second Adversary Action."

13 The claims advanced by Singh in the Complaint filed in the
14 Second Adversary Proceeding are:

15 - Pursuant to a state court order Lipworth bought real
16 property commonly known as 1625 and 1625 ½ 28th Street, Sacramento,
California.

17 - After Singh filed bankruptcy, "[Lipworth] continued to
18 harass plaintiff by attempting to take his home and thus, to make
him homeless."

19 - Lipworth "refused to apply the Federal Homestead
20 exemption to sell of the subject property."

21 - Lipworth "refused to recognize the automatic stay."

22 - Lipworth "refused to accept the offer of getting more
23 money than he got from the sale of the [Duplex] in exchange of the
24 subject property. Thus, [Lipworth's] motive is not to satisfy the
judgment by taking more money. But, [Lipworth's] motive is to
harass [Singh] by taking [Singh's] home."

25 **STANDARD OF REVIEW.**

26 In considering a motion to dismiss, the court starts with the
27 basic premise that the law favors disputes being decided on their
28 merits, and a complaint should not be dismissed unless it appears

beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to the relief. Williams v. Gorton, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with respect to whether a motion to dismiss is to be granted should be resolved in favor of the pleader. Taylor v. Breed, 58 F.R.D. 101, 105 (N.D. Cal. 1973) (citing Pond v. General Electric Co., 256 F.2d 824, 826-827 (9th Cir. 1958)). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true. Kossick v. United Fruit Co., 365 U.S. 731, 888 (1961).

When considering a motion to dismiss, the court must determine whether the complaint alleges facts sufficient for the court to conclude that a plausible claim is stated. Mere boilerplate recitation of the legal elements of a claim or legal conclusions are not sufficient. Ashcroft v. Iqbal, _____ U.S. ____, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, 883-884 (2009). A Motion to Dismiss for failure to state a cause of action, Rule 12(b)(6), tests the formal sufficiency of the pleadings, and is not a procedure for resolving about the facts or the substantive merits of the plaintiff's case. 5B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure §1356 (3rd ed. 1998); Cervantes v. City of San Diego, 5 F.3d 1273 (9th Cir. 1993).

CLAIMS ALLEGED IN SECOND ADVERSARY PROCEEDING.

In dismissing the First Adversary Proceeding the court extensively addressed the pleadings and claims which Singh was asserting concerning Lipworth's pre-petition purchase of the Duplex. In the First Adversary Proceeding Singh asserted that he had no interest in the Duplex, that Lipworth purported to have

1 purchased the Duplex prior to the commencement of this bankruptcy
2 case, that other persons actually owned the property, and Singh
3 wanted to litigate the rights of the alleged third-party owners
4 against Lipworth.

5 In this Second Adversary Proceeding, Singh again affirmatively
6 pleads that Lipworth purchased the Duplex at a sheriff's sale
7 pursuant to order of the court prior to the commencement of the
8 bankruptcy case. Complaint, Second Adversary Proceeding,
9 paragraph 4. Singh also expressly alleges that Lipworth proved in
10 state court litigation that Singh had an interest in the Duplex.
11 Singh then alleges that he has claims against Lipworth because of
12 the purchase of the Duplex.

13 Singh opposes the Motion to Dismiss by stating that through
14 this Second Adversary Proceeding the court must determine two
15 issues:

16 - Who is the owner of the Duplex?

17 - Is Lipworth a creditor?

18 Singh further contends that dismissing this Second Adversary
19 Proceeding without determining these two issues is not justified.

20 In repeating his opposition to the motion to dismiss the First
21 Adversary Proceeding, Singh contends that Lipworth "missed many
22 steps before the motion for dismissal of the complaint and other
23 relief. Prior to the motion for dismissal, the following happens:
24 a demurrer or a summary of judgment is filed; and opportunities to
25 amend the complaint to cure defects are provided." Singh does not
26 provide any legal authorities or citations in support of his
27 allegations that a motion to dismiss is not properly before this
28 court as a responsive pleading to the Complaint.

1 **SUBSTANCE OF MOTION TO DISMISS.**

2 Rule 12(b), Federal Rules of Civil Procedure, as made
3 applicable to this Adversary Proceeding by Rule 7012, Federal Rules
4 of Bankruptcy Procedure, provides that a motion to dismiss may
5 properly be filed in response to a complaint filed in federal
6 court. Contrary to Singh's allegation that a case cannot be
7 dismissed until after a summary judgment motion, Rule 12(b)
8 expressly authorizes a defendant to file a motion to dismiss in
9 response to a complaint in federal court.

10 Though Singh asserts that several legal theories exist upon
11 which he wishes to base claims against Lipworth, he fails to plead
12 facts upon which this court can conclude that he states a plausible
13 claim. Singh concludes that Lipworth's unidentified "actions
14 amount to harassment and other illegal acts upon the plaintiff in
15 violation of the Bankruptcy Laws, in violation of the laws for the
16 Federal Fair Debt Collection and in violation of other federal
17 laws." It is not sufficient for Singh to merely state that he
18 alleges that Lipworth's action violate federal law, but must plead
19 what acts he alleges violate federal law. All that he alleges is
20 that Lipworth proved that Singh owned the Duplex and that Lipworth
21 purchased the Duplex at a state court ordered sale prior to the
22 commencement of the bankruptcy case.

23 The court cannot identify, and Singh does not address in his
24 opposition to the Motion, what "federal homestead exemption" that
25 Lipworth refused to apply to sell the Duplex. The court is not
26 aware of any such "federal homestead exemption" which would have
27 applied to a state court sale of property in enforcing a state
28 court judgement.

1 Singh also alleges that Lipworth refused to recognize the
2 automatic stay, but fails to allege any facts by which Lipworth
3 "refused to recognize" the automatic stay in Singh's bankruptcy
4 case. The state court sale was completed prior to the commencement
5 of this bankruptcy case by Singh, at which time an automatic stay
6 would arise for Singh. 11 U.S.C. §362(a). There are no allegations
7 in the Complaint or opposition of any conduct by Lipworth after
8 Singh filed bankruptcy which are asserted to violate the automatic
9 stay.

10 Singh further contends that Lipworth refused to accept an
11 "offer of getting more money than he got from the sale of the
12 [Duplex] in exchange of the subject property." However, Singh does
13 not allege that Lipworth, as the owner of the Duplex, had any legal
14 obligation to accept an offer to sell the property to Singh or
15 someone Singh designates. Singh does not allege that he has any
16 right of redemption following the court-ordered sale.

17 **DECISION.**

18 The Complaint in this Second Adversary Proceeding is actually
19 the amended complaint filed by Singh against Lipworth following the
20 court granting the motion to dismiss in the First Adversary
21 Proceeding, with leave to amend. Merely by adopting a strategy of
22 jumping from one adversary proceeding to the next, rather than
23 facing the issue of whether he can amend a complaint, Singh cannot
24 avoid the consequences of failing to be able to plead a sufficient
25 complaint in federal court.

26 Singh has failed to plead sufficient facts and advance a legal
27 theory by which the court could conclude that a plausible claim is
28 asserted against Lipworth. Even taking each factual allegation as

1 true, the Complaint in the Second Adversary Action fails to state
2 a claim for which it appears plausible that relief can be granted
3 to the Plaintiff.

4 As stated in the Memorandum Opinion and Decision for dismissal
5 in the First Adversary Proceeding, Singh is an experience litigant,
6 having prosecuted a number of actions in the state court, including
7 an appeal before the Third District Court of Appeal. Though Singh
8 appears to have been relatively unsuccessful in the state court
9 litigation and bankruptcy court litigation to date, he has
10 continued to represent himself and prosecute these adversary
11 proceedings and bankruptcy cases(his third case filed in the past
12 12-month period is Case No. 10-28544, here in the Eastern District
13 of California) in pro se. Such is Singh's right and he is afforded
14 not only all of the rights, courtesies, and respect to the
15 attorneys appearing in this court, but has been given extensive
16 time for hearings on his various motions to develop his theories as
17 a lay person. There is now a third adversary proceeding filed in
18 Singh's latest Chapter 13 case, Adversary No. 10-2231, in which he
19 asserts claims against his wife concerning issues relating to the
20 ownership of the Duplex and that he is neither Suman Mehta nor Kaus
21 Singh.

22 In granting a motion to dismiss, it is common for the court to
23 grant the plaintiff leave to amend the complaint. As stated by the
24 Court of Appeals for the Ninth Circuit in Allen v. City of Beverly
25 Hills, 911 F.2d 367, 373 (9th Cir. 1990), leave to amend is to be
26 freely given when justice so requires. In Allen the Ninth Circuit
27 states that whether leave to amend is to be granted is within the
28 discretion of the court. Id. The trial court's discretion on

whether to allow an amendment is "particularly broad where plaintiff has previously amended the complaint." Id., 373 (citing Fidelity Financial Corp. v. Federal Home Loan Bank, 792 F.2d 1432, 1438 (9th Cir. 1986) and Mir v. Fosburg, 646 F.2d 342, 347 (9th Cir. 1980)).

In determining whether leave should freely be given to amend pursuant to Rule 15(a), Federal Rules of Civil Procedure, and Rule 7015 Federal Rules of Bankruptcy Procedure, five factors commonly considered by the trial court are (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment, and (5) whether the plaintiff has previously amended his complaint. Allen, supra, 911 F.2d at 373 (citing Ascon Properties, Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989)).

This determination must be considered in light of the litigation which Singh has already engaged in this bankruptcy court and the state court. The court identifies the following bankruptcy cases filed by Singh in this court and the adversary proceedings or contested matters which Singh has commenced against Lipworth relating to the Duplex.

I. Chapter 13 Case No. 09-44480

Case Filed November 9, 2009.
Case Dismissed November 25, 2009.

A. Motion to Bar Lipworth From Claiming Ownership of Duplex.

Motion Filed November 19, 2009.

Order Denying Motion Filed November 20, 2009.

II. Chapter 13 Case No. 09-45778

Case Filed November 24, 2009.
Case Dismissed April 5, 2010.
Notice of Appeal of Dismissal Filed April 8, 2010.

- 1 A. Motion to Bar Lipworth From Claiming Ownership of Duplex.
2 Motion Filed November 25, 2009.
3 Order Denying Motion Filed December 21, 2009.
- 4 B. Motion to Avoid Lien of Lipworth.
5 Motion Filed December 8, 2009, as Attachment M-1 to
6 Chapter 13 Plan (Stated basis to avoid, "Debt is in Dispute").
7 Plan and Motion Not Set For Hearing.
- 8 C. Motion to Stay Lipworth State Court Writ of Possession.
9 Motion Filed December 15 ,2009.
10 Order Denying Motion Filed February 12, 2010.
- 11 D. Counter Motion Change Trustee and Stop Frauds on the
12 Courts.
13 Counter Motion filed January 4, 2010.
14 (Counter motion to Trustee's Motion to Dismiss for
15 Unreasonable and Prejudicial Delay).
16 Order Denying Counter Motion Filed April 5, 2010.
- 17 E. Motion for Order to Show Cause re Lipworth, Lipworth's
18 Counsel, Chapter 13 Trustee, Chapter 13 Trustee's Counsel, and
19 Office of the United States Trustee.
20 Motion for Order to Show Cause Filed February 4, 2010.
21 Order Denying Motion for Order to Show Cause Filed
22 March 16, 2010.

23 III. Chapter 13 Case No. 10-28544

- 24 Case Filed April 2, 2010.
25 Case Pending.
- 26 A. Motion for Declaration That Raj Singh is neither Suman
27 Mehta nor Kaus Singh.
28 Motion Filed April 12, 2010.
 Order Denying Motion Filed April 28, 2010.

IV. Adversary Proceeding 09-02810, Filed in Case No. 09-45778

- Singh v. Stephen Lipworth and Does 1-10.
Complaint Filed December 16, 2009.

1 Order Granting Motion to Dismiss, With Leave to Amend, Filed
2 March 18, 2010.

3 Order Dismissing Case, Without Prejudice, April 13, 2010.

4 V. Adversary Proceeding 10-02154, Filed in Case No. 09-45778

5 Singh v. Stephen Lipworth and Does 1-10.

6 Complaint Filed March 18, 2010.

7 Motion to Dismiss Pending .

8 VI. Adversary Proceeding 10-2231, Filed in Case No. 10-28544

9 Singh v. Karen Singh and Does 1-10.

10 Complaint Filed April 28, 2010.

11 Adversary Pending.

12 Throughout all of his bankruptcy proceedings, whether by
13 Adversary proceeding or contested matter, Fed. R. Bankr. P. 9014,
14 Singh has attempted to state claims against Lipworth based on
15 Lipworth having purchased the Duplex at a state court ordered sale
16 pursuant to a judgment that Lipworth obtained against Singh.
17 Through the state court proceeding in which the judgment was
18 entered and related proceedings attacking the writ of execution and
19 writ of possession issued by the state court, Singh has asserted
20 that he did not own the Duplex and that Lipworth should not be
21 allowed to or should not have been allowed to have the Sacramento
22 County Sheriff conduct a sale of the Duplex under the state court
23 issued writ of execution and sale order.

24 The Complaint in this Second Adversary Proceeding is the
25 amended complaint from the First Adversary Proceeding. In addition
26 to these two complaints, Singh has engaged in litigation through at
27 least seven (7) contested matters against or involving Lipworth
28 attacking Lipworth's purchase on the Duplex.

29 This is not a situation where a pro se has filed one pleading
30 and has merely inartfully attempted to state a claim. Here, Singh

1 has engaged in multiple proceedings in federal court (in addition
2 to all of the state court litigation addressed in the Memorandum
3 Opinion and Decision issued for the dismissal of the complaint in
4 the First Adversary Proceeding, attached as Addendum 1). Singh has
5 been provided multiple opportunities to amend his complaints,
6 motions, and other contested matter pleadings to try and state a
7 plausible claim against Lipworth. Rather than stating a plausible
8 claim, Singh merely attempts to re-state inadequate claims, often
9 times just cutting and pasting the pleadings from one form to
10 another.

11 It is clear to the court that after all of the contested
12 matters and multiple adversary proceedings just in this court, no
13 further leave should be given to Singh to try and "amend" the
14 present Complaint. Singh has documented through his litigation
15 strategy in the federal court the futility of allowing any further
16 amendments.

17 Singh has been given multiple opportunities to state plausible
18 claims and has been unable to do so. In addition, the court has
19 given Singh multiple opportunities to obtain counsel to prosecute
20 whatever harassment, violation of the Federal Fair Debt Collection
21 Practices Act, and "illegal acts" in violation of the Bankruptcy
22 Laws and "other federal laws." Singh has either chosen not to
23 engage such counsel or when presented with the facts of the case
24 Singh is attempting to advance, counsel is declining the
25 opportunity to represent Singh. Whatever the case, each time Singh
26 has filed amended or new pleadings, they are a rehash of prior
27 pleadings without sufficient change to plead a plausible claim.

28 This clearly demonstrates the futility of the court allowing

1 for further amendment to this Complaint and there being further
2 restatements of the same, unsupported claims against Lipworth.
3 Bankruptcy cases, contested matters, and adversary proceedings are
4 not a carrousel of filings with no end. Singh cannot engage in
5 endless litigation asserting implausible claims against Lipworth
6 relating to the state court sale of the Duplex.

7 The numerous adversary proceedings and contested matters to
8 date have now worked prejudice to Lipworth, a judgment creditor of
9 Singh. Lipworth litigated the underlying claim and obtained a
10 judgment in state court. Lipworth then litigated the enforcement
11 of the judgment against the Duplex, addressing Singh's challenges
12 in both the trial court and the California Third District Court of
13 Appeal. After the matter being remanded to the state trial court
14 with the order to proceed with the sale of the Duplex, Lipworth
15 incurred further cost, expense, and delay in various attacks on the
16 writ of sale and writ of possession after the sale. Lipworth's
17 judgment against Singh was issued February 2, 2005, and the
18 Sheriff's sale through which Singh states that Lipworth acquired
19 the Duplex occurred in November 2009.

20 Finally, the court also concludes that the various bankruptcy
21 cases filed by Singh, the motions and contested matters within
22 those cases, and the adversary proceedings show that these
23 proceedings are in bad faith. They are part of a continuing
24 pattern by Singh of using the state and federal courts to try and
25 wear down Lipworth and the courts. Singh is not attempting to
26 litigate a bona fide dispute, but use the bankruptcy proceedings
27 and federal courts to hinder, delay, and improperly impede Lipworth
28 as a judgment creditor. In filing his Chapter 13 cases, Singh has

1 failed to adequately complete the Schedules and Statement of
2 Financial Affairs. By his own admission, Singh has no regular
3 income, which is required to be a debtor in a Chapter 13 case.
4 See, 11 U.S.C. 109(e).

5 In the Civil Minutes constituting the findings of fact and
6 conclusions of law in support of the order dismissing Chapter 13
7 Bankruptcy Case no. 09-45778, the court detailed the numerous
8 deficiencies of Singh in this bankruptcy case. The court
9 incorporates as part of its decision in granting this Motion to
10 Dismiss the findings of fact and conclusions of law stated in the
11 Civil Minutes filed on March 30, 2010, Docket Entry 116, in
12 Chapter 13 Bankruptcy Case No. 09-45778, which are attached to
13 these findings as Addendum 2.

14 The court concludes that Singh having been provided multiple
15 opportunities to plead claims against Lipworth, given repeated
16 opportunities to either amend or refine the pleadings so as to
17 state a plausible claim, and failing to be able to file a Complaint
18 in this Adversary Proceeding stating a plausible claim against
19 Lipworth, the Adversary Proceeding is dismissed with prejudice as
20 provided in Rule 41(b), and operates as an adjudication on the
21 merits.

22 Lipworth shall file any costs bill or other request for
23 allowable costs, fees, or expenses, within fourteen (14) days of
24 the issuance of the order dismissing this Adversary Proceeding.
25
26
27
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ADDENDUM 2

MEMORANDUM OPINION AND DECISION
DISMISSING ADVERSARY PROCEEDING NO. 09-02810

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re	)	Case No. 09-45778-E-13
)	
RAJ SINGH,)	
)	
Debtor(s).)	
_____)	
)	
RAJ SINGH,	)	Adv. Pro. No. 09-02810
)	
Plaintiff(s),)	
v.)	
)	
STEPHEN LIPWORTH,)	
	)	DATE: March 9, 2010
Defendant(s).	)	TIME: 1:00 p.m.
_____	)	DEPT: E

- NOT FOR PUBLICATION -

MEMORANDUM OPINION AND DECISION
Motion to Dismiss Adversary Proceeding

Stephen Lipworth ("Lipworth"), the defendant, has filed a Motion to Dismiss this Adversary Proceeding commenced by Raj Singh ("Singh"), the Debtor. Lipworth has also requested that the court impose a federal "pre-filing review requirement" as a condition precedent to Singh filing any further lawsuits concerning the subject matter of this litigation.

Allegations by Lipworth in Support of Motion to Dismiss

The Motion to Dismiss by Lipworth asserts that the issues at

1 the heart of this Adversary Proceeding relate to the real
2 property commonly known as 1625 and 1625-1/2 29th Street,
3 Sacramento, California, (the "Duplex") and the title to that
4 property. Lipworth states that on August 24, 2009, a deed was
5 issued by the Sacramento County Sheriff to Lipworth for the
6 Duplex pursuant to a state court issued Writ of Execution.
7 Lipworth Declaration, paragraph 3. Lipworth further states that
8 the Debtor attempted to vacate the state court order authorizing
9 the sheriff's sale, which requests were denied by the state
10 court. Then, after the Sheriff's Deed was delivered on or about
11 September 18, 2009, the state court denied a motion by the Debtor
12 to set aside the Sheriff's Sale and the title, if any,
13 transferred to Lipworth by the Sheriff's Deed. Lipworth
14 Declaration, paragraph 3.

15 On or about November 2, 2009, trials were held in two
16 actions for unlawful detainer commenced by Lipworth in the
17 Sacramento County Superior Court to obtain possession of the
18 Duplex. Lipworth Declaration, paragraph 7. Lipworth testifies
19 that judgment was entered in favor of Lipworth and against Singh
20 as to the Duplex. Though not expressly stated in the Motion or
21 declaration, the court understands the phrase "in favor of
22 Lipworth and against Singh" to mean that the State Court ordered
23 that Lipworth is entitled to possession of the Duplex.

24 Lipworth further asserts that Singh attempted to attack the
25 state court judgment and Writ of Possession by commencing another
26 action in state court titled *Rico Chaca and Karen Singh v.*
27 *Superior Court, Sacramento County Superior Court, case no. 2009-*
28 *800003696.* Lipworth Declaration, paragraph 7. Lipworth does not

1 offer an explanation as to how Singh, who appears not to be named
2 in that action, "commenced it" in an effort to stay and set aside
3 the prior judgment and Writ. Lipworth's testimony is that
4 requests to stay and set aside his judgment and Writ of
5 Possession were denied in the Chaca and Singh state court action.
6 Lipworth Declaration, paragraph 7.

7 Lipworth argues that to the extent Singh attempts to state a
8 cause of action for "common law fraud," the litigation privilege
9 arising under California Civil Code §47(b) bars such derivative
10 tort litigation. It is asserted that all of the conduct at issue
11 is what occurred in the state court litigation.

12 Lipworth also makes a passing reference to the contention
13 that the Adversary Proceeding should be dismissed because the
14 Complaint filed by Singh lacks the requisite specificity
15 necessary for a fraud claim.

16 The Motion to Dismiss then transitions into a discussion of
17 the Full Faith and Credit Statute, 28 U.S.C. §1738, and the
18 preclusive effect of a state court judgment if a party attempts
19 to relitigate the same issues in a subsequent federal action.
20 Lipworth directs the court to the Bankruptcy Appellate Panel
21 decision, *In re Khaligh*, 338 B.R. 817 (9th Cir. BAP 2006),
22 reviewing issue preclusion when a matter has been previously
23 decided in state court.

24 Lipworth further alleges that the Debtor has been found to
25 be a vexatious litigant in at least 3 other state court actions.
26 The evidentiary basis for this is set forth in the Lipworth
27 declaration, paragraph 5, and Exhibits F and G in support of the
28 Motion. As noted in the court's decision on Lipworth's related

1 motion for relief from the automatic stay, the various court
2 decisions attached as exhibits do not appear to be properly
3 authenticated as required by the Federal Rules of Evidence. To
4 the extent that Lipworth provides testimony as to these facts,
5 they do not appear to be based on personal knowledge and are of
6 limited probative value. Because a Motion to Dismiss is
7 determined on what is stated in the Complaint and not on
8 extrinsic evidence, these and other additional facts do not bear
9 on the Motion to Dismiss, though they could be relevant in
10 connection with the request for a pre-filing review requirement.

11 **Review of the Singh Complaint**

12 In considering a motion to dismiss, the court starts with
13 the basic premise that the law favors disputes being decided on
14 their merits, and a complaint should not be dismissed unless it
15 appears beyond doubt that the plaintiff can prove no set of facts
16 which would entitle him to the relief sought. *Williams v.*
17 *Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with
18 respect to whether a motion to dismiss is to be granted should be
19 resolved in favor of the pleader. *Taylor v. Breed*, 58 F.R.D. 101
20 (N.D. Cal 1973). For purposes of determining the propriety of a
21 dismissal before trial, allegations in the complaint are taken as
22 true. *Kossick v. United Fruit Co.*, 365 U.S. 731, 888 (1961).

23 A Motion to Dismiss for failure to state a cause of action,
24 Rule 12(b)(6), Federal Rules of Civil Procedure,¹ tests the
25 formal sufficiency of the pleadings, and is not a procedure for
26

27
28 ¹ Unless otherwise stated, all references to "Rule" shall be to the Federal Rules of Civil Procedure. Rule 12(b) is made applicable to this Adversary Action by Rule 7012, Federal Rules of Bankruptcy Procedure.

1 resolving the facts or the substantive merits of the plaintiff's
2 case. *Wright and Miller, Federal Practice and Procedure*, §1356;
3 and *Cervantes v. City of San Diego*, 5 F.3d 1273 (9th Cir. 1993).
4 The court does not consider facts or defenses alleged by the
5 moving party which are not found in the complaint itself.

6 In considering a motion to dismiss, the court starts with
7 the plain language in the complaint setting forth the basis for
8 the rights which are being asserted by the plaintiff. The Singh
9 Complaint filed in this Adversary Proceeding, alleges that:

10 1. The property which is the subject of the Singh
11 Complaint is 1625 and 1625 ½ 28th Street, Sacramento, California
(the "Duplex"). Singh Complaint, paragraph 4.

12 2. The last owner of the Duplex was an individual named
13 Suman Mehta, who is not Singh. Singh Complaint, paragraph 4.

14 3. To obtain the Sheriff's Deed, Lipworth "illegally
15 alleged and proved in state court" that Singh is Suman Mehta.
Singh Complaint, paragraph 4.

16 4. The Duplex was sold by the Sheriff to satisfy
Lipworth's judgment against Singh. Singh Complaint, paragraph 4.

17 5. Singh is not Suman Mehta. Singh Complaint, paragraph 4.

18 6. State and Federal Courts had previously determined that
19 Singh is not Suman Mehta. Singh Complaint, paragraph 4.

20 7. The Sheriff therefore sold Singh's interest in the
21 Duplex, which was zero, to Lipworth. Singh Complaint,
paragraph 4.

22 8. The sale by the Sheriff "prevented Singh and Suman
23 Mehta from protecting the property under the Bankruptcy laws."
Singh Complaint, paragraph 4.

24 9. Lipworth manipulated the legal system to obtain a writ
of possession for the Duplex. Singh Complaint, paragraph 4.

25 10. Lipworth's actions amount to common law fraud upon
26 Singh. Singh Complaint, paragraph 6.

27 11. Lipworth's actions were malicious, fraudulent and
outrageous. Singh Complaint, paragraph 7.

12. Lipworth's actions have subjected Singh to humiliation and embarrassment, as well as fear and anxiety about the loss of home as a result. Singh Complaint, paragraph 8.

13. Singh seeks the bankruptcy court to bar Lipworth's claim of ownership to the property, stay the state court writ of possession, damages totaling \$4,000,000, attorneys' fees, treble the action damages, and a declaration of the ownership of the Duplex. Singh Complaint, prayer for relief.

Singh has amplified the claims he is stating in his opposition to the Motion to Dismiss. This Opposition to the Motion to Dismiss is similar in content and substance to other pleadings Singh has filed in his bankruptcy case, including Singh's previous request for this court to issue an order to show cause against Lipworth and other persons relating to the enforcement of the state court judgment against the Duplex. The Singh Opposition asserts that Lipworth has fooled and manipulated the courts for more than a decade and has committed gross frauds on the courts by asserting and obtaining a state court ruling that Singh is Suman Mehta.

Singh expands the nature of the rights he believes that his is asserting through the Singh Complaint, stating that he believes he has a claim for mistaken identity based on California Code of Civil Procedure §699.510(c)(3)², and 28 U.S.C. §2201³

² C.C.P. §699.510(c)(3).

(3) If a person who is not the judgment debtor has property erroneously subject to an enforcement of judgment proceeding based upon an affidavit of identity, the person shall be entitled to the recovery of reasonable attorney's fees and costs from the judgment creditor incurred in releasing the person's property from a writ of execution, in addition to any other damages or penalties to which an aggrieved person may be entitled to by law, including the provisions of Division 4 (commencing with Section 720.010).

³ 28 U.S.C. §2201.

(a) In a case of actual controversy within its jurisdiction, ..., any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be

1 and §2202⁴. With respect to an unplead claim for mistaken
2 identity under C.C.P. §699.510(c), Singh does not provide any
3 explanation of how he, as a judgment debtor who asserts no
4 interest in the Duplex, can assert that is property was
5 mistakenly sold pursuant to an affidavit of identity to pay the
6 judgment of another. Singh also does not explain how a
7 declaratory relief action lies in federal court to address an
8 issue which has previously been determined in state court
9 (Lipworth proving that Singh is Suman Mehta in order to obtain
10 the Writ of Execution and Sheriff's Deed) or how a declaration of
11 rights of third-parties as to ownership of the Duplex can be
12 advanced in this court by Singh, who affirmatively pleads that he
13 has no interest in or rights to the Duplex.

14 Singh asserts that while he did not have and does not claim
15 an interest in the Duplex, it is Kaus Singh and Suman Mehta who
16 assert an interest adverse to that of Lipworth in the Duplex.
17 Singh believes that he, rather than the third-parties, should
18 have the authority and access to the federal courts to vindicate
19 the rights of these third-parties who Singh alleges have an
20 interest in the Duplex.

21 The Singh Opposition concludes with the statement that
22 Lipworth is and was involved in gross frauds on the courts and
23

24 sought. Any such declaration shall have the force and effect of a final
25 judgment or decree and shall be reviewable as such....

26 ⁴ 28 U.S.C. § 2202. Further relief

27 Further necessary or proper relief based on a declaratory judgment or decree may be granted, after
28 reasonable notice and hearing, against any adverse party whose rights have been determined by such
judgment.

1 the gross injustice in the courts, and that Lipworth "FORCED" the
2 federal and state court to apply laws incorrectly. The Singh
3 Complaint does not allege and the Opposition does not state how
4 any state or federal court was "FORCED" by Lipworth to
5 incorrectly apply the law.

6 Singh filed a late Further Opposition to the Motion to
7 Dismiss. Though the late opposition could be stricken by the
8 court, and notwithstanding the fact that Singh appears to have
9 extensive experience in litigating in both the state trial courts
10 and having represented himself in at least one appeal, the court
11 will consider the late Further Opposition to afford Singh the
12 benefit of all assumptions and presumptions to which he is
13 entitled on a Motion to Dismiss.

14 This Further Opposition adds contentions which Singh
15 believes he should be able to assert in the federal courts
16 concerning what has transpired here and in the state court
17 proceedings. First, Singh advises the court that he is seeking a
18 Writ of Mandate from the Ninth Circuit Court of Appeals because
19 the Clerk's Office did not enter Lipworth's default in this
20 Adversary Proceeding. The court notes that Singh elected to use
21 a noticed motion to request the entry of a default by the court,
22 rather than using the simple request for entry of default by the
23 clerk with the form which is available on the court's website.
24 The Clerk's Office set the motion filed by Singh for hearing at
25 the date and time directed by Singh.⁵ When the motion for entry
26

27 ⁵ Pursuant to Rule 9014-1, Eastern District Local Rules of Bankruptcy Procedure, parties self
28 select the dates for hearings on law and motion matters from a list of available dates and times for the
court.

1 of default and default judgment was heard, the requested default
2 could not be entered because by the time Singh's noticed hearing
3 was conducted, a responsive pleading had been filed by Lipworth.

4 The Further Opposition focuses the scope of the Singh
5 Complaint, stating that Singh is seeking to have two issues
6 decided in this Adversary Proceeding - (1) Who (but not including
7 Singh) is the owner of the Duplex, and (2) Is Lipworth a
8 creditor. These claims are not included in the Singh Complaint,
9 and the Further Opposition does not state how either of these
10 represent a case in controversy for Singh for commencing this
11 adversary proceeding.

12 Singh repeatedly directs the court to review a California
13 Third District Court of Appeals decision in one of the state
14 court cases he has litigated with Lipworth.⁶ One of the
15 conclusions that Singh draws from the DCA Opinion (without citing
16 to any specific portion of that opinion) is that if Singh can
17 show that Lipworth committed the alleged fraud in state court,
18 then "The damages for the frauds on the court is losing
19 everything to the other party and going to jail." Singh then
20 concludes that everything belonging to Lipworth should be awarded
21 to Singh and Lipworth's attorney should be sent to jail. The
22 court notes that this DCA Opinion, to which it has been
23 repeatedly directed to review by Singh, also contains a long
24 review of the various state court proceedings, including
25 determinations made by the state court concerning the use of the
26

27 ⁶ The case is *Singh v. Lipworth*, California Third District Court of Appeal, Case No. C053762,
28 filed June 18, 2008, which is an unpublished decision of that court. A copy of this decision is attached as
Exhibit C to the Lipworth Exhibits in Support of Motion.

1 names Suman Mehta and Kaus Singh as aliases by Singh, the failure
2 of Suman Mehta and Kaus Singh to ever appear in any state court
3 proceedings, and that Singh has consistently denied having an
4 interest in or owning the Duplex.

5 The opposition also affirmatively states that as between
6 Lipworth and Singh, the state court has already found that Singh
7 was Suman Mehta and Archana Singh. It also alleges that Singh,
8 Kaus Singh, Archana Singh, and Suman Mehta have all been unable
9 to get an attorney to represent them because no attorney wants to
10 be involved with a case that has allegations of frauds.

11 **The Complaint on its Face Demonstrates that Singh Lacks**
12 **Standing to Assert Claims Relating to the Ownership of the Duplex**

13 The issue of whether the Complaint should be dismissed
14 starts with what Singh has alleged in his Complaint. If Singh
15 adequately alleges a claim, then the Complaint will not be
16 dismissed. It is undisputed, and admitted by Singh, that Singh
17 unequivocally asserts that he did not and does not own the
18 Duplex. Without citing specific conduct, Singh alleges that
19 Lipworth was able to convince the state court that Singh actually
20 owned the Duplex and the Duplex could be sold in enforcing
21 Lipworth's judgment against Singh.

22 The Complaint does not state what Lipworth is alleged to
23 have improperly done to convince the state court, other than to
24 state that Lipworth "illegal proved in the State Courts that Raj
25 Singh is Suman Mehta." Complaint, paragraph 4. Further Singh
26 asserts that Lipworth has "manipulated the legal system" and
27 Lipworth's actions amount to common law fraud. Neither the
28 complaint nor the Oppositions state how Singh asserts any rights

1 with respect to the Duplex that were effected by Lipworth's
2 conduct in the state court action.

3 **Standing, Rule 12(b)(1) and 12(b)(6)**

4 Before addressing the sufficiency of the Complaint, the
5 court must first determine whether this court has jurisdiction
6 for this matter to have been brought in federal court by Singh.
7 Merely because Singh is a debtor in a Chapter 13 case does not
8 obviate the basic requirement that a person must have standing so
9 that there is a real "case in controversy" being presented to the
10 court.

11 The federal courts are not a forum for the theoretical or
12 vicarious litigation of rights of others who are not before the
13 court (with limited exceptions to this rule, such as class action
14 and other specifically authorized representative proceedings).
15 Standing must be determined to exist before the court can proceed
16 with the case. *Sacks v. Office of Foreign Assets Control*, 466
17 F.3d 764, 771. (9th Cir. 2006)

18 Though neither party identified the issue of standing, the
19 court may raise it *sua sponte*, Rule 12(h)(3), Federal Rules of
20 Civil Procedure⁷. A person must have a legally protected
21 interest, for which there is a direct stake in the outcome of the
22 federal court litigation. *Arizonans for Official English v.*
23 *Arizona*, 520 U.S. 43, 64, 117 S.Ct. 1055 (1997). The Supreme
24 Court provided a detailed explanation of the Constitutional case
25 in controversy requirement in *Northeastern Florida Chapter of*
26 *Associated General Contractors of America v. City of Jacksonville*

27
28 ⁷ As made applicable to this Adversary Proceeding by Rule 7012, Federal Rules of Bankruptcy Procedure.

1 Florida, 508 U.S. 656, 663, 113 S.Ct. 2297 (1993). The party
2 seeking to invoke federal court jurisdiction must demonstrate (1)
3 injury in fact, not merely conjectural or hypothetical injury,
4 (2) a causal relationship between the injury and the challenged
5 conduct, and (3) the prospect of obtaining relief from the injury
6 as a result of a favorable ruling is not too speculative, *Id.* In
7 determining whether the plaintiff has the requisite standing and
8 the court has jurisdiction, the court may consider extrinsic
9 evidence. *Roverts v. Corrothers*, 812 F.2d, 1173, 1177 9th Cir.
10 1987).

11 In the present case, to the extent that the Complaint is
12 based on Singh seeking a determination of whether Kaus Singh,
13 Suman Mehta, or Lipworth have interests in the Duplex, Singh is
14 not asserting a legally protected interest he has relating to the
15 Duplex or the issue of ownership. Singh merely is attempting to
16 assert or vindicate rights of others. Singh affirmatively states
17 that he has no right to or interest in the Duplex. It is for
18 Kaus Singh and Suman Mehta to step up and assert their rights and
19 interests in the Duplex. It is not for Singh to be their "front
20 man" for asserting such rights, if any. For all the court knows,
21 Kaus Singh and Suman Mehta do not assert any rights to or
22 interest in the Duplex, and acknowledge that Lipworth has the
23 superior interests he asserts through the state court
24 proceedings. To the extent that Singh is asserting in this
25 Complaint that this action is necessary so he can have the rights
26 of these third parties determined, he fails to meet the
27 Constitutional standing requirement.

28

Rule 12(b) Failure to State a Cause of Action

To the extent that Singh asserts he has been the victim of "common law fraud," he has standing to assert and properly plead such a claim. Though not stated in the motion or opposition, Rule 8⁸ states the general rules for pleadings. Rule 8 requires (1) a short and plain statement of the grounds for the court's jurisdiction, (2) short and plain statement of the claim showing that the pleader is entitled to the relief, and (3) a demand for the relief sought. Rule 9(b)⁹ has an added requirement for special matter pleading, which includes fraud claims.

Rule 9(b). Fraud, Mistake, Condition of Mind.
In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

For fraud, the complaint must include averments such as the time, the place, the identity of the parties involved, and the nature of the fraud or mistake. *Wright and Miller, Federal Practice and Procedure*, Civil §1241. Under California law, common law fraud is comprised of the following elements:

- (1) A misrepresentation (the statement is actually false).
- (2) It is known to be false by the person making the statement.
- (3) The person making the statement intends to defraud the victim (induce reliance).
- (4) The misrepresentation was reasonably relied upon by the victim.

⁸ As made applicable to this Adversary Proceeding by Rule 8, Federal Rules of Bankruptcy Procedure.

⁹ As made applicable to this Adversary Proceeding by Rule 9, Federal Rules of Bankruptcy Procedure.

(5) The victim incurs damages.
Lazar v. Superior Court, 12 Cal.4th 631,638 (1996); *Kaldenbach v. Mutual of Omaha Life Ins. Co.*, 1778 Cal. App. 4th 830 (2009); and *Witkin, Summary of California Law 10th Edition*, Vol. 5 Fraud §772. These elements are also found in statutory definition of deceit in California, California Civil Code §1709, which is cited in the Singh Opposition.

When the required elements of fraud are compared with the pleading requirements of Rule 9(b), it becomes clear that Singh does not adequately plead a claim for fraud. This analysis produces the following results:

- (1) A misrepresentation (the statement is actually false).
 - The Complaint asserts that Lipworth made the alleged misrepresentation to the state and federal courts that Singh is Suman Maltha.
- (2) It is known to be false by the person making the statement.
 - The Complaint alleges that Lipworth knew that Singh is not Suman Mehta, and therefore knew the statement was false.
- (3) The person making the statement intends to defraud the victim (induce reliance).
 - The Complaint alleges that Lipworth intended to defraud the state and federal courts, but does not allege that Lipworth intended to defraud Singh, the plaintiff-victim in this case.
- (4) The misrepresentation was reasonably relief upon by the victim.
 - The Complaint does not assert that the alleged misrepresentation was reasonably relief upon by the state and federal court, but rather that the state and federal court were forced to misapply the law. More significantly, it is not alleged that the Singh, the plaintiff-victim in this Adversary Proceeding, reasonably relied upon the alleged misrepresentation.

1 (5) The victim incurs damages.

2 - The Complaint alleges that Singh has incurred
3 \$4,000,000.00 in damages, but does not allege that the
4 damages arise from the four other elements or the
5 alleged misrepresentation. The Complaint affirmatively
6 alleges that Singh did not and does not have any
interest in the Duplex. Rather, it appears that Singh
believes that third-parties may be damaged to the
extent that Lipworth asserts an interest in the Duplex
pursuant to the Sheriff's deed.

7 As drafted and explained in the Oppositions, the Complaint
8 not only fails to allege, but affirmative pleads that Singh does
9 not satisfy several of the necessary elements to assert a claim
10 for fraud. Additionally, these affirmative pleadings demonstrate
11 that Singh does not have standing because he is not attempting to
12 assert rights he has or address wrongs done to him.

13 The court concludes that the Lipworth Motion to Dismiss is
14 properly granted since Singh has failed to state a claim, as well
15 as Singh establishing that he does not have standing to assert
16 the claim he describes in the Complaint.

17 **Litigation Privilege**

18 Lipworth also seeks dismissal of the Complaint based on the
19 litigation privilege arising under California Civil Code §47(b).
20 Though a plaintiff does not need to plead around anticipated
21 defenses, if the defense is clear on the face of the complaint,
22 then that defense can be a basis for dismissing the complaint.
23 *McCalden v. California Library Ass'n*, 955 F.2d 1214 (9th Cir.
24 1990).

25 The California Supreme Court recently addressed the scope of
26 the litigation privilege in *Rusheen v. Cohen*, 37 Cal.4th 1048
27 (2006). In *Rusheen*, the court was presented with the issue of
28 whether post-judgment enforcement activities, such as obtaining a

1 sister state judgment and levying on property in enforcing a
2 California court judgment, were protected by the litigation
3 privilege when the defendant asserted that the underlying
4 judgment was obtained by fraud. It was alleged in *Rusheen* that
5 the declaration attesting to service on the defendant was
6 fraudulent, and that fraud would support an independent tort
7 action against the judgment creditor.

8 The California Supreme Court states that the current
9 statutory privilege is a codification of the common law. The
10 litigation privilege applies to all torts, with the exception of
11 malicious prosecution. This grants an absolute immunity from
12 claims arising from communications made at or in connection with
13 litigation. *Id.*, 1057. The privilege extends to the enforcement
14 of the judgment, not merely the court proceedings in obtaining
15 the judgment. *Id.*, 1062. This privilege is necessary for there
16 to be a properly functioning judicial system and a person being
17 able to seek relief from the courts. *Id.*, 1063.

18 In *Briscoe v. LaHue*, 460 U.S. 325 (1983), and *Tenney v.*
19 *Brandlove*, 341 U.S. 367 71 (1951) the United States Supreme Court
20 addressed the federal common law absolute privilege in litigation
21 and legislative proceedings. The Ninth Circuit Court of Appeals
22 addressed the California privilege in *Rodriguez v. Panayiotou*,
23 314 F.3d 979 (9th Cir. 2002), and its broad application to any
24 communication made in connection with a judicial proceeding.

25 Singh is correct in stating that a state law litigation
26 privilege cannot override all federal statutes. In *Kimes v.*
27 *Stone*, 84 F.3d 1121 (9th Cir. 1996) the Ninth Circuit Court of
28 Appeals concluded that a claim arising under 42 U.S.C. §1983 or

1 §1985(3) could not be immunized by the litigation privilege since
2 the claims arose under constitutional rights or statutory civil
3 rights derived therefrom, citing to *Wyatt v. Cole*, 504 U.S. 158,
4 112 S.Ct. 1827 (1992). In so ruling in *Wyatt*, the Supreme Court
5 concluded that the common law privilege would not apply when
6 Congress created a statutory scheme and rights for which there
7 was not a privilege at common law, it would not be presumed that
8 an unstated privilege applied to the new statutory rights.
9 *Wyatt*, pg 1831.

10 Singh also cites in his Oppositions *Yates v. Allied Intern.*
11 *Credit Corp.*, 578 F. Supp. 12 51 (S.D. Cal 2008), for the
12 proposition that the court allowed an intentional and negative
13 infliction of emotional distress tort claims against a debt
14 collector notwithstanding the litigation privilege. The alleged
15 communication in *Yates* was a false police report made by a debt
16 collector that the debtor was killing someone. The debtor then
17 brought suit for claims under the federal Fair Debt Collection
18 Practices Act, the California Fair Debt Collection Practices Act,
19 negligence, and intentional and negligent infliction of emotional
20 distress.

21 Contrary to Singh's representations in the Opposition, the
22 court in *Yates* determined that the California litigation
23 privilege precluded the plaintiff from asserting the tort claims
24 for negligence, intentional infliction of emotional distress, and
25 negligent infliction of emotional distress. *Id.*, 1254. The
26 District Court in *Yates* did hold that the California litigation
27 privilege did not preclude claims arising under the California
28 Fair Debt Collection Practices Act and the federal Fair Debt

1 Collection Practices Act. Since the California Legislature
2 enacted specific provisions governing debt collection activity,
3 some of which relate to conduct of a collector in judicial
4 proceedings, it would render that Act meaningless if the
5 privilege prevailed over the specific provisions of the Act. The
6 District Court further noted that the United States Supreme Court
7 had already held that the federal Fair Debt Collection Practices
8 Act applied against attorneys for their conduct in judicial
9 proceedings. *See, Heniz v. Jenkins*, 514 U.S. 291, 299, 115 S.Ct.
10 1489 (1995).

11 The only claim alleged by Singh or which can be divined from
12 the language in the Complaint and his Opposition, is that his
13 claim in this Adversary Proceeding relates to Lipworth obtaining
14 and enforcing a judgment from the state court. Singh
15 affirmatively alleges that the wrongful conduct was Lipworth
16 convincing the state court that the names Kaus Singh and Suman
17 Mehta were alias for Singh, and not real third-parties who Singh
18 asserts have an interest in the ownership of the Duplex.

19 Applying the litigation privilege to preclude the filing of
20 a tort action attacking conduct of Lipworth in the state court
21 proceedings does not leave Singh without a remedy. Singh could
22 assert a malicious prosecution claim to address the alleged
23 misconduct, as well as seeking further relief from the state
24 court pursuant to that court's inherent power to sanction
25 improper conduct before that court. Singh has not pleaded or
26 alleged facts which would be the basis for a malicious
27 prosecution claim in this Adversary Proceeding.

28 Based on what is alleged in the Complaint, Singh fails to

1 state a claim for which relief can be granted in light of the
2 litigation privilege as provided in Rule 12(b)(6).

3 **The Relief Sought is Beyond the Power of The Federal Court**

4 The Complaint and the Singh's Oppositions also highlight a
5 significant misunderstanding of the relationship between the
6 state and federal courts, as well as the power of each court to
7 conduct and police their respective proceedings. Singh states
8 that Singh has litigated issues with Lipworth in state court and
9 lost. It further states that Lipworth has a judgment against
10 Singh, and has enforced that judgment against the Duplex, which
11 Singh asserts is actually owned by third-parties.

12 The Original and Further Oppositions filed by Singh state
13 that Singh is seeking to have this bankruptcy court right the
14 various wrongs Singh perceives having been done by Lipworth to
15 the state courts and other federal courts (though the federal
16 courts which have been the subject of the alleged wrongdoing are
17 not identified). While Singh is seeking a declaration from this
18 court that Raj Singh is not Suman Mehta, Singh admits that
19 Lipworth "proved in State Courts that Raj Singh is Suman Mehta."
20 Singh Complaint, paragraph 4.

21 What Singh is clearly attempting to do from the plain
22 language of his Complaint in this Adversary Proceeding is to have
23 this bankruptcy court "overrule" what has been determined in
24 state court. That is not the role of a federal court, as any
25 decision in the superior court is taken to the District Court of
26 Appeal if it is to be overturned.

27 Federal courts are generally precluded from granting
28 injunctive relief to direct what occurs or does not occur in

1 state court. 28 U.S.C. §2283, the Federal Anti-Injunction Act.
2 The court is unaware of any exceptions to this Act which would
3 apply to the ongoing state court proceedings which are the
4 subject of this litigation. This court is unsure as to what
5 Singh believes this court can do with respect to the judgments,
6 orders, and writs issued by the state court judges.

7 The *Rooker-Feldman* Doctrine, *Rooker v. Fidelity Trust Co.*,
8 263 U.S. 413 (1923), confirms that federal courts, except for the
9 United States Supreme Court, lack the authority to reverse or
10 nullify a final state court judgment. A losing party in state
11 court cannot file suit in federal court after the state
12 proceedings ended, complaining of an injury caused by the state-
13 court judgment and seeking review and rejection of that judgment.
14 *Exxon Mobil corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280,
15 291-292 (2005).

16 In cases where there are parallel state and federal court
17 actions, issue preclusion bars the federal court from
18 relitigating what has been decided in state court. As stated by
19 the Supreme Court, the Full Faith and Credit Act, 28 U.S.C. §
20 1738, requires the federal court to "give the same preclusive
21 effect to a state-court judgment as another court of that State
22 would give." *Id.*, pg. 293. "In short, the loser in state court
23 cannot avoid its fate by trying to persuade a federal district
24 court that the state judgment violates the loser's federal
25 rights." *Federal Civil Procedure Before Trial*, The Rutter Group,
26 Ch 2E-11.

27 In addition to the other grounds, Singh's Complaint on its
28 face clearly shows that he is requesting that this court violate

1 the *Rooker-Feldman* Doctrine and the Full Faith and Credit Act
2 with respect to these state court proceedings. The Complaint is
3 very clear in that it affirmatively alleges that (1) Lipworth has
4 already proved in state court that Raj Singh is Suman Mehta, and
5 (2) pursuant to a state court judgment there was a sheriff's sale
6 based on Lipworth's judgment against Singh. To the extent that
7 Singh wants this court to re-decide the issue of whether Singh is
8 Suman Mehta or if the order for the Sheriff's Sale is proper in
9 the enforcement of the Lipworth judgment, this trial court cannot
10 overrule the state court.

11 To the extent that Singh requests that this court determine
12 the respective rights of Kaus Singh, Suman Mehta, and Lipworth,
13 for which no one is alleging that there is a state court
14 judgment, Singh has not alleged that or sought that relief in the
15 Singh Complaint. To the extent that such a claim was alleged,
16 Singh affirmatively asserts that he has no interest in or right
17 to the property. Further, he does not allege any basis or
18 authority he has to assert the rights of, or bind for in any
19 decision of this court, Kaus Singh or Suman Mehta, with respect
20 to any interests Singh would assert on their behalf in an
21 adversary proceeding. As stated above, Singh does not have
22 standing to invoke the jurisdiction of this court to decide
23 issues between third-parties concerning the Duplex in which Singh
24 affirmatively states that he did not and does not have any
25 interest.

26 For each of these separate and independent grounds, the
27 Complaint should properly be dismissed.
28

Motion for Pre-Filing Review Condition

Lipworth requests that the court impose, as part of its inherent powers to control the proceedings in the federal courts, a condition that Singh obtain an order from this court before being allowed to commence an action in the federal courts. The Motion accurately cites various authorities and factors to be considered by a court in determining whether such an order should be issued and the rights of a person to seek relief from the federal courts qualified. Even if the court accepts the unauthenticated rulings and unpublished decisions from other courts and the statements in the Lipworth declaration, the court finds that the probative value of that evidence not sufficient for the issuance of such an order.

This court does not have before it an adequate, admissible presentation of the history of the various proceedings relating to the Singh litigation. This court cannot just accept a representation that other courts have concluded that Singh is a vexatious litigant. There has been no evidence of what is contended to be the needless costs and expenses which have been caused by Singh's alleged vexatious litigation. The fact that a party may elect to exercise the right to appeal or seek reconsideration, does not in and of itself constitute improper litigation. To the extent that the state court judges have such evidence before them, they can make such a determination. At this point in time, the only evidence before this court is the Adversary Proceeding, pleadings in response to the present motion, and the motion for issuance of an order to show cause in the parent case.

1 The court will not grant this extraordinary relief requested
2 by Lipworth.

3 **The Ruling of the Court is:**

4 The court grants the Motion to Dismiss for each of the
5 following separate and independent grounds,

- 6 a. Singh does not have standing to assert any claims
7 relating to the ownership of and right to the Duplex.
- 8 b. Singh does not have standing to assert any rights or
9 interests of Kaus Singh or Suman Mehta relating to the
10 Duplex.
- 11 c. Singh has failed to plead with sufficient specificity a
12 fraud claim as required by Rule 9(b), Federal Rules of
13 Civil Procedure, and has failed to state a claim under
14 Rule 12(b)(6).
- 15 d. Singh has affirmatively pleaded facts which establish
16 that he fails to state a claim under Rule 12(b)(6).
- 17 e. The litigation privilege bars the present action based
18 on the Complaint alleging the basis of the claim(s)
19 being Lipworth's conduct in the state court proceedings
20 and enforcing the judgment obtained from the state
21 court, and based upon the face of the Complaint it
22 fails to state a claim under Rule 12(b)(6).
- 23 f. The Complaint requests relief beyond the scope of the
24 jurisdiction of this court to overturn judgments
25 previously issued in the state court.
- 26 g. The Complaint seeks to relitigate issues which Singh
27 admits have been previously decided by the state court,
28 which are barred under the Full Faith and Credit Act
and the *Rooker-Feldman* Doctrine.

22 The court denies the request that a pre-litigation
23 application and court authorization requirement be imposed on
24 Singh before he commences any further litigation concerning the
25 subject to the present litigation.

26 Dated: March 18, 2010

27 /s/
RONALD H. SARGIS, Judge
28 United States Bankruptcy Court

ADDENDUM 3

FINDINGS OF FACT AND CONCLUSIONS OF LAW
DISMISSAL OF BANKRUPTCY CASE 09-45778

123. 09-45778-E-13L
NLE #1

RAJ SINGH CONT. HEARING - MOTION
TO DISMISS WITH PREJUDICE WITH
A 180-DAY BAR TO REILING
12-30-09 [32]

Local Rule 9014-1(f)(2) Motion.

Proper Notice Provided. The Proof of Service filed on December 30, 2010, states that the Motion and supporting pleadings were served on Debtor (*pro se*), other parties in interest, and Office of the United States Trustee.

The Motion to Dismiss, continued from January 19, 2010, and again from March 9, 2010. was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). A briefing schedule was established and supplemental pleadings were filed by both parties.

The court's decision is to find that cause exists under 11 U.S.C. §1307(c), for the court to dismiss this case. Oral argument was presented by the parties at the scheduled hearing, where the parties shall address the issues identified in the court's tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The Trustee's initial pleading argues that Debtor has engaged in unreasonable delay which is prejudicial to creditors, failed to provide all of the information required by 11 U.S.C. §521, failed to disclose a prior chapter 7 case which was previously adjudicated by the court, and is abusing the protections of the bankruptcy code by repeatedly filing bankruptcy to pursue litigation against a creditor. In his supplemental pleadings, the Trustee also asserts the Debtor is not attempting to reorganize, does not qualify for bankruptcy protection under Chapter 13, and that he may pursue this motion to dismiss without meeting and conferring with the Debtor.

As becomes readily apparent when the court's orders on the Debtor's Motion to Have an Order to Show Cause Issued (DCN #RS-4), Motion to Avoid Lien of Creditor (M-3 Attachment to December 3, 2009 Plan), Motion for Relief From Automatic Stay (DCN #DNL-2), Motion to Barring Creditor to Claim Ownership of Duplex (DCN #RS-1), Motion for Entry of Default and Default Judgment (Adv. Pro. #09-02810, DCN #DNL-1), and Motion to Change Trustee and For an Investigation (DCN #NLE-1 Counter-Motion), it is readily apparent that the Debtor's entire focus on this case is to challenge the Sheriff's Deed obtained by Lipworth for real property commonly known as 1625 and 1625 ½ 28th Street, Sacramento, California (the "Duplex") in which the Debtor affirmatively states

1 that he did not and does not have or assert any interest in or right
2 to either prior to or in this bankruptcy case.

3 **TRUSTEE'S STANDING TO SEEK RELIEF UNDER 11 U.S.C. §1307(c)**

4 In reply to the Trustee's motion, Debtor argues that the Trustee does
5 not have standing to file the motion. In support of this contention,
6 Debtor cites to In re Kutner, 3 B.R. 422, 427 (Bankr. N.D. Tex 1980).
7 In Kutner, the Bankruptcy Court discussed the differences in authority
8 between a Chapter 11 Trustee and the Chapter 13 Trustee. The Kutner
9 court concluded that the Chapter 13 Trustee is only permitted to
10 appear and be heard on selected matters, and therefore the Chapter 13
11 Trustee was unable to bring a motion under 11 U.S.C. §1307(c). Kutner,
12 3 B.R. at 427. However, several other courts have held that the
13 Chapter 13 Trustee is a "party in interest" and therefor permitted to
14 bring a motion under 11 U.S.C. §1307(c). In re Kelsey, 6 B.R. 114
15 (Bankr. S.D. Tex. 1980), In re Padalecki, 263 B.R. 785 (Bankr. W.D.
16 Tex. 2001), In re White, 126 B.R. 542 (Bankr. N.D. Ill. 1991), In re
17 Faaland, 37 B.R. 407 (Bankr. D.N.D. 1984). There is no controlling
18 authority on this issue in the Ninth Circuit.

19 The court determines that the proper interpretation under Chapter 13
20 of the Bankruptcy Code is that the Chapter 13 Trustee is a "party in
21 interest" and therefore is permitted to bring a motion to dismiss
22 under 11 U.S.C. §1307(c).

23 Further, Debtor contends that the Trustee cannot bring a motion to
24 dismiss without first meeting and conferring with the Debtor or filing
25 a "motion to correct the errors." Debtor cites no statute, rule of
26 procedure, or relevant case law to support these propositions. The
27 Trustee asserts that while Local Bankruptcy Rule 4001-1(d)(2) does
28 require the Trustee to meet and confer with the moving party in a
motion for relief from the automatic stay, such requirement is
inapplicable here. The court agrees. Debtor's contentions are
without merit.

19 **THE DEBTOR HAS ESTABLISHED THAT HE DOES NOT
20 QUALIFY AS A DEBTOR UNDER CHAPTER 13**

21 The Bankruptcy Code ("Code") restricts who may be a debtor in a
22 Chapter 13 proceeding. 11 U.S.C. §109(e), inter alia, provides:

23 Only an individual with regular income that owes,
24 on the date of the filing of the petition,
25 noncontingent, liquidated, unsecured debts of less
26 than \$ 360,475 and noncontingent, liquidated,
27 secured debts of less than \$1,081,400 . . . may be
28 a debtor under chapter 13 of this title.

One of the threshold requirements to be a debtor in a Chapter 13 case
is that the debtor must be a person who has a regular income with
which to fund a Chapter 13 Plan. The Code defines an "individual with
regular income" as an "individual whose income is sufficiently stable
and regular to enable such individual to make payments under a plan
under chapter 13 of this title, other than a stockbroker or a
commodity broker." An individual must have a regular income to make

1 plan payments, even if the proposed plan calls for plan payments of
2 \$0.00. In re Terry, 630 F.2d 634, 635 (8th Cir. 1980). In Terry, the
3 court found the key statutory language to be "make payments," and if
4 the debtor had no excess income from which he or she could make
5 payments, they were not eligible for relief under Chapter 13. Id., see
6 also In re Lindsey, 183 B.R. 624, 627 (Bankr. D. Idaho 1995). Gifts
7 from others are not income with sufficient stability and regularity to
8 qualify as "regular income." Gulley v. DePaola (In re Gulley), 301
9 B.R. 361, 365 (M.D. Ala. 2003).

10 Here, Debtor's Schedule B discloses that the Debtor's sole asset is
11 \$72 cash. Schedule A merely states that the Debtor's interest in the
12 Duplex "is to be determined," and does not assert any right or
13 interest. Schedule I is blank except for two statements: under
14 "Occupation" Debtor typed "N.A." and at the bottom of the page, the
15 Debtor typed "This form is not applicable until liability of debtor is
16 decided. Debtor is unemployed." Schedule J is blank except for the
17 statement that, "This form is not applicable as the payment will be
18 provided by others. Expenses are paid by others." In his Statement
19 of Financial Affairs, Debtor asserts that he had no income whatsoever
20 over the last two years, either from employment or operation of a
21 business, or from sources other than employment or operation of a
22 business.

23 In his response to the Motion, the Debtor indicates that he is willing
24 to amend the documents and simply needs even more time to do so. The
25 Debtor chose to file this bankruptcy (his second Chapter 13 case, the
26 first having been dismissed on November 25, 2009, Case No. 09-44480)
27 on November 24, 2009. This court continued the original hearing on
28 this Motion from January 19, 2010, to March 30, 2010, providing Debtor
with 127 days to get the basic bankruptcy documents filed. The
court's review of the docket reveals that the Debtor has failed to do
so. The Debtor's Schedules and Statement of Financial Affairs reflect
a wholesale failure to or intentional disregard for complying with the
basic requirements imposed by the Bankruptcy Code on the Debtor.
Rather than providing the court and parties in interest with the
information required of him under the Bankruptcy Code, in his most
recent filings the Debtor asserts that, "Recently, the Court of Appeal
rendered a decision in favor of the debtor's family. Accordingly,
debtor plans to pay all the debts against debtor as soon as he gets
the money from other sources." Debtor fails to provide any further
details about how this is to occur or his interest as part of the
family in the judgment from the court of appeal.

23 From the Debtor's own statements, offered under the penalty of
24 perjury, he affirmatively states that he does not have a source of
25 regular income. He states for the court and parties in interest that
26 the Debtor's expenses are paid by others, but the Debtor provides no
27 information on the regularity or stability of these payments for his
28 expenses. A debtor must have a stable and regular income to permit
him to make payments under a Chapter 13 Plan to qualify for relief
under Chapter 13. 11 U.S.C. §§101(30), 109(e). A purported appellate
court decision in an unidentified action for an indefinite amount in
favor of unidentified family members is not regular or stable income.
Since Debtor admits that he does not have regular income from which to
fund the plan, the Debtor does not qualify for relief under Chapter

13. This is cause to either dismiss or covert the case.

The court having determined that the Debtor does not qualify for relief under Chapter 13, sufficient case exists for the court to issue relief as provided under 11 U.S.C. §1307.

DEBTOR'S FAILURE TO REORGANIZE.

The original Chapter 13 Plan in this case provided that the Debtor was to pay \$1.00 a month for 60 months, "until the liability of the debtor is determined in state court. All the debts are in dispute." Debtor's Plan, Docket Entry 14, filed on December 8, 2010. As stated above, the only creditor on the Schedules is Lipworth, who is listed as disputed. In his opposition to this Motion, Debtor's Opposition to Relief From Stay, Debtor's Motion For Issuance of an Order to Show Cause, and Debtor's Motion to Change Trustee, the Debtor has affirmatively stated that Lipworth previously obtained a judgment in state court against the Debtor and that Lipworth proceeded to enforce the judgment against the Debtor. Nothing in the numerous pleadings filed in this case by the Debtor give the court any indication of what dispute exists as to the status of Lipworth as a creditor in this case or the obligation owing under the state court judgment.

In the December Plan the Debtor provides no other funding for any claims, and the total amount committed therein is \$60.00. For whatever reason, the Debtor never sought to obtain confirmation of the December Plan.

On March 16, 2010, as part of his opposition to the present Motion and in support of Debtor's Motion to Change Trustee, the Debtor has filed a document titled "Chapter 13 Proposed Plan." Docket Item #105. The Debtor seeks time to implement this "March Plan." The "March Plan" consists of one paragraph and states in its entirety as follows:

Debtor Raj Singh, proposes the following plan:

Recently, the Court of Appeal rendered a decision in favor of the debtor's family. Accordingly, the debtor plans to pay all the debts against debtor as soon as he gets the money from other sources. Until that time, debtor should be allowed to find other sources of money also; nothing should be collected from debtor and the stay should continue to protect all properties belonging to Debtor including debtor's home.

This proposed "March Plan" is not an Eastern District of California Form Plan as required by General Order 05-03, ¶2(a), which form the Debtor previously correctly used for the December Plan, and does not contain the necessary provisions for a Chapter 13 Plan.

In addition to the facially defective plans, the Debtor's failure, inability, refusal to proceed with a reorganization is further documented by the defective Petition, Schedules, Form 22C, and Statement of Financial Affairs in this case. The Debtor has failed, both initially and continuing for the 127 days of this case, to complete the Schedules and Statement of Financial Affairs in this

1 case. The Bankruptcy Code does not allow debtors to self-select what
 2 information and when they chose to provide that information in a
 bankruptcy case. The statutory duties of the Debtor in this case
 include:

- 3 1. Filing -
- 4 a. A list of creditors
- 5 b. A schedule of assets and liabilities
- 6 c. A schedule of current income and expenses.
- 7 d. A statement of the debtor's financial affairs.
- e. Copies of all payment advices or other evidence of
 payment received within the 60-days prior to the
 filing of the petition.

8 11 U.S.C. §521(a). These documents must be completed in good faith
 and list the information therein, and are not merely procedural forms
 9 which may be filed in blank. "The debtor has a duty to prepare
 schedules carefully, completely, and accurately." Cusano v. Klein, 264
 10 F.3d 936, 945-946 (9th Cir. 2001) (quoting In re Mohring, 142 B.R.
 389, 394 (Bankr. E.D. Cal. 1992)). All of these documents are
 11 executed under penalty of perjury by the Debtor, attesting that all of
 the information is true and correct. An omission of accurate
 12 information is a misrepresentation by omission in the same manner as a
 debtor who plugs in false information merely to make the form look
 13 complete. This information is critical to any attempt to
 reorganization in a Chapter 13 case and confirmation of a Chapter 13
 14 plan.

15 The December Plan filed by the Debtor committed the total sum of \$60,
 which was to be paid over 60 months, for the total payments by the
 16 Debtor for creditors. The most recent "March Plan" commits nothing to
 creditors, from an undisclosed asset, which is identified as a
 17 judgment obtained by the "debtor's family" from an appellate court
 which for some unstated reason would be used by the Debtor to fund a
 18 Plan. The Debtor has not listed any such litigation or claims against
 third-parties on Schedule B as an asset of the Statement of Financial
 19 Affairs as pending litigation.

20 During the 127 days since this Chapter 13 case was filed (the Debtor's
 undisputed second Chapter 13 case in the past 6 months) is one in
 21 which the Debtor has filed various pleadings seeking this court to re-
 view issues which have previously been determined in state court, to
 22 stay the state court and Lipworth from enforcing the Lipworth judgment
 against property in which the Debtor states he had and has no
 23 interest, and requesting the court issue an Order to Show Cause
 against Lipworth, Lipworth's attorney, the Chapter 13 Trustee, and the
 24 Office of the U.S. Trustee, and other unnamed persons, so that
 sanctions can be imposed against them. The Debtor has chosen to
 25 expend his bankruptcy reorganization time and resources in filing
 pleadings in this case seeking orders from this court barring Lipworth
 26 from claiming ownership in property pursuant to a Sheriff's deed in a
 state court action (which the Debtor asserts is owned by non-debtor
 27 third-parties), and disqualifying the prior judge who was assigned
 this case (the case was transferred to the present judge upon his
 28 recent appointment to the bench and not pursuant to the motion to
 disqualify). The Debtor has also filed a motion to avoid liens (M-3

Attachment to the December Plan), which only states that the "debt is disputed." On the same calendar as the present motion is the Debtor's Counter-Motion to Change Trustee and to Stop Frauds on the Courts. In all, the filings already total 112 documents in this case, without one being a motion to confirm a Plan.

It is clear to the court that the Debtor has not, and does not, intend to attempt or proceed with any Chapter 13 reorganization, but instead to use these proceedings to obtain a free injunction for the litigation as he attempts to attempt to re-litigate his state court fights with Lipworth in the federal courts. The non-bankruptcy litigation which has been included or pending includes not only the state court action in which a judgment has been obtained by Lipworth against the Debtor, but two unlawful detainer actions brought by Lipworth, an action asserted by Lipworth to have been brought by or on behalf of Singh in the names of Rico Chaca and Karen Singh v. Superior Court, Sacramento County Superior Court Case No. 2009-80000369, and an appeal taken to the California Third District Court of Appeal which was decided in favor of Lipworth enforcing his judgment against the Duplex in which the Debtor has consistently stated he did not and does not have an interest. These various actions are reviewed in detail in the Civil Minutes of the court issued in support of its order denying the Debtor's request for an Order to Show Cause, Docket No. 103, and the court's order granting the motion to dismiss the adversary proceeding the Debtor filed against Lipworth, Adv. No. 09-2810, and the Civil Minutes in support of that order are incorporated herein by reference and made a part of these Civil Minutes. The Debtor has now filed a second adversary proceeding against Lipworth, Adv. No. 10-02154, in this bankruptcy case.

The court concludes that the Debtor has not, is not, and does not intend to attempt a reorganization in this case or to confirm a Chapter 13 Plan, and that cause exists under 11 U.S.C. §1307(c).

DEBTOR'S FAILURE TO PROVIDE ACCURATE INFORMATION

The Trustee also seeks an order pursuant to 11 U.S.C. §1307 that the Debtor has failed to provide accurate information, though he has technically filed the Schedules and Statement of Financial Affairs forms required by the Bankruptcy Code. Some of the significant facial deficiencies in the forms filed by the Debtor identified by the Trustee and obvious from the court's review of the pleadings in this case include:

1. For names which the Debtor has also been known as on the petition he has answered "Many short form R. Singh."

2. Schedule A describes the Duplex, and states that the Debtor's interest is "To be decided."

3. Schedule B lists as the sole asset of the Debtor \$72.00 in cash. This Debtors, as he testifies in his schedules under penalty of perjury,

- a. No Checking or Savings
- b. No Household Goods or Furnishing

- c. No Books, Pictures, Etc.
 - d. No Wearing Apparel
 - e. No Firearms and sports, photographic, and other hobby equipment
 - f. No interests in insurance policies, annuities, retirement benefits, stocks, partnership or bonds
 - g. No cars or boats
 - h. No other assets listed in any of the other categories listed on Schedule B.
4. Schedule D lists no creditors holding secured claims
 5. Schedule E lists no creditors holding priority unsecured claims.
 6. Schedule F lists only Lipworth as the Debtor's creditor holding a general unsecured claim.
 7. Schedule G lists no executory contracts.
 8. Schedule H lists no co-debtors.
 9. Schedule I lists no income.
 10. Schedule J lists no expenses.
 11. Statement of Financial Affairs
 - a. Question 1 - No income during the current and prior two years from employment or operation of business.
 - b. Question 2 - No income during the current and prior two years other than employment or operation of business.
 - c. Question 4 - Fails to list litigation, but merely states "Creditor is aware of all lawsuits."
 - d. Question 5 - States that Lipworth foreclosed on the Duplex within one year of the bankruptcy filing.
 - e. Question 16 - Leaves blank and fails to answer the name of the Debtor's spouse or former spouse, who is referenced in the Debtor's other pleadings in this case that the Third District Court of Appeal opinion to which the Debtor has repeatedly referred the court in other in connection with other motions in this case.
 12. The Debtors Statement of Current Monthly Income and Calculation of Commitment Period (Form 22C) under penalty of perjury,
 - a. Fails to state if the Debtor is married or unmarried.
 - b. Fails to state any amount of income.

- c. Fails to contain any information for computation of the Commitment Period.
- d. Fails to contain any information for Calculation of Deductions From Income.
- e. Fails to state any other information.
- f. Is signed by the Debtor under penalty of perjury as being true and accurate.

It is clear that the Debtor's strategy in this case is to not provide the basic information necessary for the court, Chapter 13 Trustee, U.S. Trustee, parties in interest, and the Debtor himself to advance this case through confirmation of a plan. Cause exists under 11 U.S.C. §1307(c).

DEBTOR'S FAILURE TO DISCLOSE ALLEGED PRIOR CHAPTER 7 CASE

Throughout these proceedings, the Debtor has focused on attacking the Creditor Lipworth, the Chapter 13 Trustee, and the Office of the U.S. Trustee for asserting that the Debtor was determined by another court in this District to be the debtor in a case filed in the name of Suman Mehta. Case No. 09-34043.

In reviewing the docket from the Mehta case, the court notes that "Suman Mehta" filed the following pleadings:

1. Ex-Parte Motion to set aside sale of property to Lipworth.
2. Request for Order Barring Lipworth from claiming ownership of property that was the subject of the Sheriff's sale to Lipworth. This Motion is similar in style, content, substance, and format to the pleadings filed by the Debtor in the instant case.
3. Second Motion for Order Barring Lipworth from claiming ownership to property that was the subject of the Sheriff's sale to Lipworth. This Motion is similar in style, content, substance, and format to the pleadings filed by the Debtor in the instant case.
4. Notice of Appeal of the court's decision to dismiss the court's decision to dismiss the bankruptcy case for "Suman Metha's" failure to appear at the First Meeting of Creditors (341 Meeting).
5. Motion for Order to Show Cause against Lipworth for asserting an interest in property pursuant to the Sheriff's Deed. This Motion is similar in style, content, substance, and format to the pleadings filed by the Debtor in the instant case.

The court in that action denied the various requests and motions filed by "Suman Metha."

1 As the Debtor was told in these proceedings, this court is concerned
 2 about what is happening in this case and what this Debtor is doing to
 3 reorganize under Chapter 13, not what may be argued about the "Suman
 4 Metha" bankruptcy filing. While the Debtor has remained fixated on
 5 the "Suman Metha" issue, he has ignored his incomplete Schedules and
 6 Statement of Financial Affairs, has filed facially deficient Chapter
 7 13 "Plans," and has failed or refused to file a motion to confirm a
 8 Plan. The Debtor has chosen to invest his time and used his resources
 9 these past 127 days to file a number of other motions and a request
 10 for an order to show cause all centering on the issue of whether he is
 11 or is not Suman Metha, presumably because he believes these are his
 12 best issues and arguments in this Chapter 13 case.

13 All of the court's findings of fact and conclusions of law in the
 14 Suman Metha bankruptcy case were made orally on the record and this
 15 court has not been provided with a copy of those transcripts. As
 16 such, and to avoid any delusion by the Debtor that any contentions
 17 that he is Suman Metha has any bearing on the present Motion, the
 18 court denies, without prejudice, these grounds for determining that
 19 cause exists for relief under 11 U.S.C. §1307. The court has been and
 20 continues to be concerned only with the Debtor's conduct and lack of
 21 action in the present bankruptcy case.

22 **180-DAY BAR ON REILING A BANKRUPTCY CASE.**

23 11 U.S.C. §109(g) specifies the basis for a Debtor being barred for
 24 180-days from filing another case under Title 11 and 11 U.S.C. §349(a)
 25 specifies that the court may dismiss a bankruptcy case "with
 26 prejudice" for cause. In his supplemental pleading, the Chapter 13
 27 Trustee withdrew his request that the case be dismissed with
 28 prejudice.

Under 11 U.S.C. §109(g), a 180-day bar on the reiling of a case
 occurs in two specified statutory situations, which are if:

(1) the case was dismissed by the court for wilful failure
 of the debtor to abide by orders of the court, or to appear
 before the court in proper prosecution of the case; or

(2) the debtor requested and obtained the voluntary
 dismissal of the case following the filing of a request for
 relief from the automatic stay provided by section 362 of
 this title.

In his Motion the Chapter 13 Trustee has not identified the "orders of
 the court" which the Debtor has wilfully failed to abide by upon which
 dismissal is based. What is clear from the pleadings filed in this
 case the Debtor has failed to comply with his obligations under the
 Bankruptcy Code, has not provided accurate information in his
 Schedules, Statement of Financial Affairs, and Form 22C (most of which
 the Debtor has elected to leave blank or advise the court and parties
 in interest that he will provide the information at some later date
 when he, the Debtor, determines appropriate).

The Debtor has chosen to advance litigation theories in the form of
 motions and has sought to have this court overrule or override

1 judgments obtained in the state court by Lipworth as the judgments are
 2 applied against non-debtor third-parties. While one can envision a
 3 party seeking an injunction against further filings by this Debtor
 4 based upon his conduct in this case and the theories upon which such a
 5 request can be based, such a request for injunctive relief has not
 6 been made in this Motion.

7 The Chapter 13 Trustee having sought an order of this court under 11
 8 U.S.C. §109(g)(1), which is a self effectuating statute, and not
 9 having identified any orders of the court which the Debtor has
 10 willfully failed to abide by, the request for a 180-day stay is
 11 denied, without prejudice.

12 DECISION

13 11 U.S.C. §1307 provides that the court, upon cause shown, may either
 14 dismiss or convert a case to one under Chapter 7, based upon what the
 15 court concludes is in the best interests of creditors and the Estate.
 16 11 U.S.C. §1307(c) provides, in pertinent part:

17 §1307. Conversion or dismissal

18 (c) Except as provided in subsection (e) of this section, on
 19 request of a party in interest or the United States trustee
 20 and after notice and a hearing, the court may convert a case
 21 under this chapter to a case under chapter 7 of this title,
 22 or may dismiss a case under this chapter whichever is in the
 23 best interests of creditors and the estate, for cause,
 24 including--

25 (1) unreasonable delay by the debtor that is prejudicial to
 26 creditors;...

27 (3) failure to file a plan timely under section 1321 of this
 28 title;...

(5) denial of confirmation of a plan under section 1325 of
 this title and denial of a request made for additional time
 for filing another plan or a modification of a plan;

(6) material default by the debtor with respect to a term of
 a confirmed plan;...

(9) only on request of the United States trustee, failure of
 the debtor to file, within fifteen days, or such additional
 time as the court may allow, after the filing of the
 petition commencing such case, the information required by
 paragraph (1) of section 521;

(10) only on request of the United States trustee, failure
 to timely file the information required by paragraph (2) of
 section 521; or....

The court applies a "totality of the circumstances" test in
 determining whether cause exists under 11 U.S.C. §1307(c). In re
 Love, 957 F.2d 1350 (7th Cir. 1992). The "for cause" grounds

1 enumerated in this section are not exclusive. A debtor's failure to
2 propose a confirmable plan is also grounds for dismissing or
converting a Chapter 13 case.

3 Upon motion and hearing, the court may dismiss or covert a Chapter 13
4 case for cause. 11 U.S.C. §1307(c). Questions of conversion or
dismissal must be dealt with through a two step analysis: "First, it
5 must be determined that there is 'cause' to act[;] [s]econd, once a
determination of 'cause' has been made, a choice must be made between
6 conversion and dismissal based on the 'best interests of the creditors
and the estate.'" In re Nelson, 343 B.R. 671, 675 (9th Cir. B.A.P.
2006) (citing Ho v. Dowell (In re Ho), 274 B.R. 867, 877 (9th Cir.
7 B.A.P. 2002)). The list of causes included in 11 U.S.C. §1307(c) is
not an exhaustive list, and other causes for conversion or dismissal
8 may be considered. Nelson, 343 B.R. at 674.

9 In considering whether to convert or dismiss the case for cause, it is
not the province of this court to shield Debtor from consequences of
10 his own actions at creditors' expense. In re Sobczak, 369 B.R. 512
(9th Cir. B.A.P. 2007).

11 The Debtor has clearly established that cause exists under multiple
12 and independent grounds for the court to order the conversion or
dismissal of this case under 11 U.S.C. §1307(c).

13 For each of the following separate and independent grounds cause
14 exists under 11 U.S.C. §1307(b) for the conversion or dismissal of
this bankruptcy case.

15 First, cause exists due to the Debtors wholesale failure to
16 complete the Schedules and Statement of Financial Affairs in this
case. The Debtor has been afforded 127 days in which to file the
17 Schedules and Statement of Financial Affairs which would be at least
appear to be a plausible attempt to fulfill his obligations under the
18 Bankruptcy Code. It is clear to the court from the statements on the
Schedules and Statement of Financial Affairs that the Debtor will
19 complete them at a latter date or that the information is not
applicable, that the Debtor has chosen not to provide the information.
20

21 Second, cause exists based on the Debtor stating under penalty of
perjury on multiple forms that he has no regular income. Without
22 regular income of some sort, the Debtor has established that he cannot
meet the requirements to be a Chapter 13 debtor. 11 U.S.C. §§101(30),
§109(e).

23 Third, cause exists based on each of the Plans filed in this case
24 by the Debtor making no provision for the payment of any money to the
Trustee to fund the Plan and provide for payment of creditor claims.
25 A Plan providing for a *de minimis* payment of \$1 a month for 60 months
or an undisclosed amount from an unstated action for which there is a
26 state court appellate decision which belongs to an unidentified family
member are not Plans which provide for any legally recognizable
27 payments or payments from regular monthly income.

28 Fourth, cause exists based on the Debtor demonstrating through
his conduct that the purpose of the Chapter 13 case is to re-litigate

1 issues from his various state court actions and to obtain some form of
2 injunctive relief against the state courts, Lipworth, the Chapter 13
3 Trustee, and the Office of the U.S. Trustee, and not to confirm a
Chapter 13 Plan.

4 Fifth, cause exists because of the unreasonable delay in this
5 case which is of prejudice to creditors. The Debtor continues to
6 expend time and resources of the Estate in advancing repetitive
7 motions and claims seeking to enjoin the state court and Lipworth, to
8 set aside the state court judgment and orders in the federal court,
and to have Lipworth, counsel, the Chapter 13 Trustee, and Office of
the U.S. Trustee held in contempt. The Debtor is clearly using, and
abusing, the jurisdiction of the federal courts under the Bankruptcy
Code as a tool in his arsenal in carrying on the battle which he
appears to have lost in the state court.

9 Sixth, cause exists because of the Debtor's failure to file a
10 timely plan. Merely filing a document entitled "Plan" which does have
11 present any plausibly confirmable terms does not equal filing a plan
for purposes of 11 U.S.C. §1307(c).

12 Seventh, cause exists because of the Debtor's *de facto* denial of
13 confirmation by a plan which is so defective as to mandate a denial of
confirmation, when the Debtor does not even attempt to set a hearing
for confirmation on the grossly defective plan.

14 The court, having determined that cause exists under 11 U.S.C.
15 §1307(c), the court determines that dismissal of the case is in the
best interests of creditors and the Estate.

16 The court shall issue a minute order consistent with this ruling.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

J. Russell Cunningham
1830 15th St
Sacramento, CA 95811

Raj Singh
PO Box 162783
Sacramento, CA 95816

DATED: 6/4/10

By: Wendy Locke
Deputy Clerk

EDC 3-070 (New 4/21/00)

Wendy Locke